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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**E-filing**APR 3 2008 PM 12:08
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §§ 1983**

Name Gandy Theodore W

(Last) (First) (Initial)

Prisoner Number DP 996Institutional Address 885 N. San Pedro - San Jose, CA
95110UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIATheodore Wilbur Gandy Jr
(Enter the full name of plaintiff in this action.)

vs.

Sgt. St. Smar # 2095

Officer Dave Lee # 3827

Officer Hayk ?

San Jose County D. A. et al

(Enter the full name of the defendant(s) in this action.)

San Jose Police Dept et al

CV 08**1793**Case No. 1793
(To be provided by the clerk of court)**SBA****COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C §§ 1983****(PR)***[All questions on this complaint form must be answered in order for your action to proceed..]***I. Exhaustion of Administrative Remedies****[Note:** You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]A. Place of present confinement 885 N. San Pedro Ave - San Jose, CA 95110

B. Is there a grievance procedure in this institution?

YES () NO () NA

C. Did you present the facts in your complaint for review through the grievance procedure?

YES () NO () NA

D. If your answer is YES, list the appeal number and the date and result of the

COMPLAINT

- 1 -

appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal

Writ of Habeas Corpus
NO RESPONSE - 3-writs

2. First

formal level

N/A

3. Second formal level

N/A

4 Third

formal level

N/A

E. Is the last level to which you appealed the highest level of appeal available to you?

YES ()

NO ()

N/A

F. If you did not present your claim for review through the grievance procedure, explain why

SAN JOSE POLICE OFFICERS -

EXTERNAL CIVIL VIOLATION

II. Parties

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

Theodore W. Gandy Jr. / Elaine De Rocha
885 N. San Pedro - San Jose, CA - 701 N. Abel - Milpitas, CA

B. Write the full name of each defendant, his or her official position, and his or her

COMPLAINT

Sergeant St. Amour
Officer Dave Lee
Officer Hoyt et al.
San Jose Police Dept. et al

1 place of employment.

2 Disability none

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4

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III.

7 Statement of Claim

8 State here as briefly as possible the facts of your case. Be sure to describe how each
9 defendant is involved and to include dates, when possible. Do not give any legal arguments or
10 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
11 separate numbered paragraph.

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25 IV. Relief

26 Your complaint cannot go forward unless you request specific relief. State briefly exactly
27 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

28 File Civil Claim against defendants - Claim for damages
occurred, PAIN & Suffering, + punitive damages
MONETARY DAMAGES

COMPLAINT

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7 I declare under penalty of perjury that the foregoing is true and correct.
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9 Signed this 5 day of MARCH, 20 08

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11 Sheldon W. Bandy

12 (Plaintiff's signature)
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Statement of Facts

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On October 12, 2007, three San Jose Police officers entered my residence at 2010 Monterey Rd. Apartment #343, San Jose, CA 95112. #1. Sargeant St. Amour (Badge #20057) #2 Officer Dave Lee (Badge #3027, and a third officer by the name of Haft. Entered plaintiff's residence with keys, obtain by i do not know who, to this day, for a parole search. (see exhibit 5). The problem that i have with this is that i am not on parole or probation and my name Theodore W. Gandy is the only name on the Cease Agreement. On Oct 12, 2007, Officer Dave Lee, took Elaine De Rocha and myself Theodore Gandy to his patrol car, after which, speaking with Elaine De Rocha (a visitor) officer exit her from the patrol car. Myself Theodore Gandy handcuffed in the back seat was driven around San Jose, instructed by Officer Dave Lee, to point at any one that was on parole, with drugs, had a gun, or stolen cars, and he would arrest them. After a hour, and a half when i did not have any usable information, Officer drove me through ACE trailer park, 2800 Monterey Rd. Searching for a lady named Sonya, but the last name was a question. So officer Lee instructed me to go to her trailer and steal a letter with her information, and call him later at his phone number he wrote down. (See Exhibit #3), # 831-295-2819

LEE

(2)

*
see
Exhibit
4

On Feb 1, 2008, Elaine De Rocha was arrested and charged with case #CC 891095, and myself Theodore W. Gandy, arrested on Feb 4, 2008, on the same case, CC 891095. The problem with this matter is that Sgt. St. Amour and Officer Dave Lee, committed, conspiracy and perjury when they stated to the District Attorney that Elaine De Rocha and myself Theodore W. Gandy were in fact arrested and both cited out of the San Jose Police Dept, on Oct 12, 2007, and missed there, court dates and was subsequently rearrested, for an arrest on Oct 12, 2007 that never happen.

Dave Lee Phone # 831-205-2819

As of March 4, 2008, I am still incarcerated at the San Jose Police Dept. Main Jail.

On Nov. 5, 2007, I, Theodore W. Gandy went to 191 North First St, San Jose, CA. 95113. On that date I filled out A Record Research Request (see exhibit #1).

The response from the record research was that, 1. Our records do not reflect any complaint(s) filed in Santa Clara County for the years given to search 1-1-2007 to 11-5-2007. & #2 That there records did not reflect an arrest made, or a complaint filed. (see exhibit #2) on October 12 2007.

The file # CC891996 is in Ract 2 ghost file. The only one who have knowledge of said file is the District Attorney.

I, Theodore W. Gandy Jr. swear under penalty of perjury that everything contained within is true and factual to the best of my knowledge.

Theodore W. Gandy Jr. 3-5-08

(Witness)

I, Theodore Gandy, had a personal friend Charles Hutchinson, 2011 Little Orchard ^{1st} San Jose, CA 95125. Phone #408-373-4426, go to the clerk office at 100 Hedding Superior Court Criminal Division, on or about the month of Feb, 2008, seeking, case file #CC891996 and was informed that there was no such file and never was.

Theodore W. Gandy 3-5-08

County of Santa Clara

191 North First Street
 San Jose, California 95113
 (408) 832-2700
 HALL OF JUSTICE



RECORDS RESEARCH REQUEST

Date: 11-5-07

A \$15 fee will be due if your request requires longer than 10 minutes to complete.

Requests for files stored off-site or for a large number of files must be left with the clerk.
 For files stored off-site, allow 7-10 working days. You will be notified by phone when the files have been received. You can reach this office at (408) 808-6600.

CASE NUMBER(S)

CASE NAME

REMARKS

Police Report
 Copy of Search Warrant
 Date Oct. 12-2007 11:30 AM

Address: 2010 Monterey Highway #343
 San Jose, CA 95112

I UNDERSTAND THAT REMOVAL OF A COURT FILE OR ANY DOCUMENT FROM A COURT FILE CONSTITUTES A FELONY (Government Code 6701).

Requestor

Print Name

Signature

2010 Monterey Highway #343
 Street Address, City, State S. J. CA 95112

518-9695
 Phone Number

File(s) to Requestor

Clerk:

Start time of Research Request: : AM/PM

Completion time of Request: : AM/PM Total time spent:

Fees due for this Request:

X copies @ \$ 0.50 per page = \$

X certification @ \$15.00 each = \$

Excess time Fee @ \$15.00 = \$

TOTAL AMOUNT DUE = \$

Superior Court of California
County of Santa Clara
DOWNTOWN COURTHOUSE
HALL OF JUSTICE; RECORDS RESEARCH
191 North First Street
San Jose, California 95113
(408) 508-6600

Exhibit #2



Date: 11/5/2007

Defendant's Name: GANDY, THEODORE W.

DOB: 04/04/1949

AKA(s): GANDY, THEODORE W. - GANDY, THEODORE

CASE NUMBER: N/A

- ☐ The Court is unable to process your request because of the following:
- | | |
|-----------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> There was not enough information | <input type="checkbox"/> Incomplete name or alias given |
| <input type="checkbox"/> Incomplete/wrong date of birth | <input type="checkbox"/> Incomplete/wrong case #, booking # given |

☒ Our records do not reflect any complaint(s) filed in Santa Clara County for the years given to search: 1/1/2007 to 11/5/2007.

☐ The file was Purged (Destroyed) due to the age of the case or the nature of the charge(s). Pursuant to GC 68152.

☐ Our records reflect the file was purged pursuant to GC 68152; the following is all that remains:

<input type="checkbox"/> Court Docket	<input type="checkbox"/> Record Clearance _____
<input type="checkbox"/> Other _____	Date Granted _____

☐ Our records reflect an arrest was made. However, no complaint was filed.

☐ We are temporarily unable to locate the above-referenced file at this time. The original charges and file date as shown in our automated system are as follows: File Date: _____
THIS IS NOT AN OFFICIAL RECORD OF THE COURT

Charge(s): _____, _____, _____, _____
_____, _____, _____, _____

Kiri Torre, Chief Executive Officer

By E. E. Kremerskotter
Legal Process Clerk

E. KREMERSKOTTER



Exhibit #3



Dave

831-295 2819

831-295 2819

Exhibit

Exhibit

ATTENTION: MARKHAM PLAZA RESIDENTS

If you are a past or present resident, of Markham Plaza Apartments (2000/2010 Monterey Road, San Jose,) & have been mistreated by Ky Le or any other staff member of EHC Life Builders, security personnel, or any San Jose Police Officers while at Markham Plaza Apartments or if you have any information about administrative corruption, or civil rights violations at Markham Plaza Apartments, - Please call the number below, & explain your story.

408-786-9541

Useful information might include incidents of wrongful evictions or threats of eviction, discrimination, harassment, intimidation, physical abuse, psychological abuse, illegal search, false arrest, etc.
If possible, please include dates, times, names & contact info. of those involved, and any witnesses.

Exhibit 4

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
SAN JOSE FACILITY

PROP 36 ELIGIBLE

COMPLAINT FOR ARREST WARRANT(S)

THEODORE WILBUR GANDY DPR996

ELAINE ANNA DEROCHA BYC120

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MJS
240E

THEODORE WILBUR GANDY (4/4/1949),
2010 MONTEREY HWY #343, SAN JOSE, CA 95112
ELAINE ANNA DEROCHA (3/5/1965),
2010 MONTEREY HWY #343, SAN JOSE, CA 95112

Defendant(s)

CC 891995
FELONY COMPLAINT

DA NO: 080100738

CEN 08501140

* TG WARR *

* ED WARR *

DAH

2-5-08
1:35
D61

The undersigned is informed and believes that:

COUNT 1

On or about October 12, 2007, in the County of Santa Clara, State of California, the crime of POSSESSION OF CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11350(a), a Felony, was committed by THEODORE WILBUR GANDY AND ELAINE ANNA DEROCHA who did possess a controlled substance, heroin.

It is further alleged that if probation is granted, the provisions of Health and Safety Code section 11350(d) shall apply.

COUNT 2

On or about October 12, 2007, in the County of Santa Clara, State of California, the crime of USING OR BEING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11550(a), a Misdemeanor, was committed by THEODORE WILBUR GANDY AND ELAINE ANNA DEROCHA who did use and was under the influence of a controlled substance, heroin.

NARCO

LAW OFFICE OF TODD B. ROTHBARD

4261 Norwalk Drive, No. 107
San Jose, California 95129

TODD B. ROTHBARD
ALAN HORWITZ
RYAN MAYBERRY
STEVE NAUMCHIK

Phone: (408) 244-4200
Fax: (408) 244-4267

THREE DAY NOTICE TO QUIT
(C.C.P. Section 1161 Subsection 3, 4)

TO: THEODORE W. GANDY JR., ELAINE ANNA DEROCHA, and all tenants in possession:

WITHIN THREE DAYS after service upon you of this Notice, you are required to quit and deliver up possession of the hereinafter described premises.

YOUR TENANCY is being terminated because you have materially violated the terms of the rental agreement, created and/or allowed the creation of a nuisance upon the premises and used and/or allowed the premises to be used for an unlawful purpose. Specifically, Section 11 of the rental agreement states that resident agrees the he/she shall not allow any person to share the occupancy of the premises (other than the Resident's minor child) unless the person has executed this Lease Agreement, nor shall Resident keep any roommates or boarders, nor assign this Lease Agreement sublet or transfer said premises or any part thereof without the prior written consent of Landlord. Section 18 of the rental agreement states that Tenant(s) and their guests or invitees shall not use the premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including law prohibiting the use, possession or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience or interfere with the quiet enjoyment and peace and quiet of any other tenant or staff.

In violation of Section 11 of the rental agreement, you have an unauthorized occupant living in your unit by the name of ELAINE ANNA DEROCHA. ELAINE ANNA DEROCHA is neither a party nor a signatory to the rental agreement nor did you ever obtain the written consent of the Landlord before allowing her to move into your unit. In violation of Section 18 of the rental agreement on October 12, 2007 at 10:00am two officers from the San Jose Police Department, Sergeant St. Amour (Badge #2095) and Officer D. Lee (Badge #3027), conducted a parole search of your premises located at 2010 Monterey Road, Apartment #343, San Jose, California 95112. During the search both THEODORE W. GANDY JR. and ELAINE ANNA DEROCHA admitted to having used heroin in the unit at 6:00am on October 12, 2007. Upon further search of your unit the officers found, two unloaded syringes, one bag containing heroin, a pile of heroin on a plate and cotton swabs. The Federal Controlled Substances Act, 21 U.S.C. §801, et seq. prohibits the possession and use of heroin. Pursuant to 21 U.S.C. §§841(a)(1), 844(a), it is unlawful to manufacture, distribute, dispense or possess all federally designated controlled substances. 21 U.S.C. §812(c) defines heroin as an illegal controlled substance. Thus, your possession and use of heroin at the subject premises violates federal law and your rental agreement. Your conduct also constitutes you having created and/or allowed the creation of a nuisance upon the premises and you having used and/or allowed the premises to be used for an unlawful purpose.

YOUR FAILURE to comply with this Notice will result in the immediate institution of legal proceedings against you to recover possession, attorney's fees, and court costs.

EXHIBIT-46

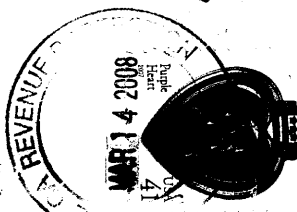
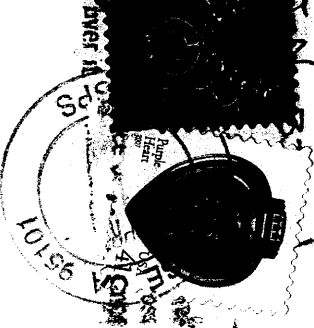
REPORT TYPE <input type="checkbox"/> SUPPLEMENTAL 11350 HS		SJPD PROPERTY		CASE NO. 073950437		<input type="checkbox"/> HEALTH HAZARD	
SOURCE CODE: "F" = FINDER "O" = OWNER "S" = SUSPECT "V" = VICTIM							
SOURCE		LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)		ADDRESS		CITY/STATE ZIP	
		<input type="checkbox"/> STATE OF CA		<input checked="" type="checkbox"/> SAN JOSE, CA		RES. PHONE #	
S1		GANDY, THEODORE		2010 MONTANA HWY 343		DOB 4-7-44	
				<input checked="" type="checkbox"/> SAN JOSE, CA		RES. PHONE #	
S2		DE ROCHA ELAINE		2010 MONTANA HWY 343		DOB 3-3-65	
				<input type="checkbox"/> SAN JOSE, CA		RES. PHONE #	
						DOB	
PROPERTY CODES		<input type="checkbox"/> D = DISPOSAL REQUEST <input type="checkbox"/> E = EVIDENCE <input type="checkbox"/> F = FOUND <input type="checkbox"/> K = SAFEKEEPING <input type="checkbox"/> O = UNDER OBSERVATION				<input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> 5150 / 8102 W&I	
		<input type="checkbox"/> FINDER'S CLAIM <input type="checkbox"/> D.V. / 12028.5				LOCATION CODES	
						L-S = LOCKER NUMBER F = FREEZER R = REFRIGERATOR V = VICTIM HOLD	
ITEM #	CODE	SOURCE	QTY	PROPERTY TYPE	BRAND/MAKE	MODEL	PROPERTY ROOM USE ONLY
SERIAL NUMBER	LOCATION COLLECTED			VALUE	LOC CODE	PROCESS EVIDENCE	
DESCRIPTION							
1	E	S1	2	SYRINGE			
				2010 MONTANA HWY 343			
TWO UNLOADED SYRINGES							
2	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
3	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
4	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
5	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
6	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
7	E	S2	1	LOCKER			
				2010 MONTANA HWY 343			
MAIL ADDRESSED TO S2							
AUTHORIZATION FOR RELEASE		DISPOSITION				DATE	TIME
EVIDENCE		CHAIN OF CUSTODY HAS BEEN BROKEN!					
FINDER'S NAME		ID NUMBER	PROPERTY	CLERK	DATE/TIME	SUPR. RVW	DATE
LCS		3077			4/1/08		
						PG 1 OF 1	

Don't Clerk & Date/Time? X2

[Redacted]

THEODORE W. GANDY JR. - 080885CC-DPR-QAC
885 N. San Pedro St
San Jose, CA 95110

[Redacted]



Clerk of the United States
District Court for the
Northern District of California
450 Golden Gate Ave, Room 3606
San Francisco, CA 94102